

House Bill 1259

By: Representative Royal of the 171st

A BILL TO BE ENTITLED

AN ACT

To amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to imposition and computation of income taxes, so as to provide certain income tax credits for clean energy property for a limited period of time; to define terms; to provide for qualifying property and conditions under which the credits shall be allowed; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to imposition and computation of income taxes, is amended by adding a new Code section to read as follows:

"48-7-29.13.

(a) As used in this Code section, the term:

(1) 'Authority' means the Georgia Environmental Facilities Authority.

(2) 'Business property' means tangible personal property that is used by the taxpayer in connection with a business or for the production of income and is capitalized by the taxpayer for federal income tax purposes. The term does not include, however, a luxury passenger automobile taxable under Section 4001 of the Internal Revenue Code or a watercraft used principally for entertainment and pleasure outings for which no admission is charged.

(3) 'Clean energy property' includes any of the following:

(A) Biomass equipment that uses renewable biomass resources for: biofuel production of ethanol, methanol, biodiesel, or hydrogen; anaerobic biogas production of methane; production of syn-gas; production of natural gas from landfill gas; or commercial thermal or electrical generation, as well as related devices for converting, conditioning, and storing the liquid fuels, gas, and electricity produced with biomass equipment;

(B) Solar energy equipment that uses solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, daylighting, generating electricity, distillation, desalinization, or the production of industrial or commercial process heat, as well as related devices necessary for collecting, storing, exchanging, conditioning, or converting solar energy to other useful forms of energy;

(C) Wind equipment required to capture and convert wind energy into electricity or mechanical power, as well as related devices that may be required for converting, conditioning, and storing the electricity produced by wind equipment;

(D) Stationary fuel cells and fuel cell powered vehicles, including equipment using hydrogen, hydrogen-rich fuel, or other fuels in an electrochemical process to generate energy, electricity, or the transfer of heat, as well as hydrogen fueling infrastructure, including infrastructure or equipment for hydrogen-fueling and storage facilities for use with and in support of stationary fuel cells and fuel cell powered vehicles;

(E) Energy efficient products as follows:

(i) Energy Star certified appliances (clothes washers, clothes dryers, dishwashers, refrigerators, hot water heaters, tankless hot water heaters, and room air conditioners);

(ii) Energy Star certified heat pumps and air-conditioning systems;

(iii) Energy Star certified furnaces, boilers, and air handlers; and

(iv) Energy Star certified geothermal heat pump systems;

(F) Energy efficient projects as follows:

(i) Lighting retrofit projects; and

(ii) Sustainable buildings; and

(G) Combined heat and power systems that involve the recovery of waste heat to form useful energy. Combined heat and power systems shall be designed to have a projected thermal efficiency of 60 percent and meet the air emissions requirements established pursuant to Code Section 12-9-5 for electricity produced.

(4) 'Cost' means:

(A) In the case of clean energy property owned by the taxpayer, cost is the aggregate funds actually invested and expended by a taxpayer to put into service the clean energy property; and

(B) In the case of clean energy property the taxpayer leases from another, cost is eight times the net annual rental rate which is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(5) 'Installation' means the year in which the clean energy property is put into service and becomes eligible for a tax credit allowed by this Code section.

(6) 'Lighting retrofit project' means a lighting retrofit system that employs dual switching (ability to switch roughly half the lights off and still have fairly uniform light

1 distribution), delamping, daylighting, relamping, or other controls or processes which
2 reduce annual energy and power consumption by 50 percent compared to the American
3 Society of Heating, Refrigerating, and Air Conditioning Engineers 2004 standard, with
4 a maximum tax credit of \$0.60 per square foot of the building.

5 (7) 'Renewable biomass resource' means:

- 6 (A) Landfill gas;
- 7 (B) Herbaceous agricultural waste and residue;
- 8 (C) Digester gas or biogas from poultry and livestock waste and other animal waste;
- 9 (D) Food process waste;
- 10 (E) Municipal solid waste;
- 11 (F) Solid, liquid, and gaseous forms of all woody biomass and mill residues;
- 12 (G) Sawmill waste;
- 13 (H) Wood chips and bark chips;
- 14 (I) Forest thinning, harvesting, or clearing residues;
- 15 (J) Wood waste from pallets or other wood demolition debris;
- 16 (K) Peanut shells, cotton plants, legumes, stalks, and plant matter including aquatic
17 plants, grasses, stalks, vegetation, residues, and other agricultural products;
- 18 (L) Cellulose containing fibers; and
- 19 (M) Post consumer waste paper.

20 (8) 'Sustainable building' means:

- 21 (A) For other than single-family residential property, new or retrofitting energy
22 efficient buildings that must reduce annual energy and power consumption by 50
23 percent compared to the American Society of Heating, Refrigerating, and Air
24 Conditioning Engineers 2004 standard by installing:
 - 25 (i) Interior lighting;
 - 26 (ii) Building envelope; or
 - 27 (iii) Heating, cooling, ventilation, motors, or hot water systems.

28 The tax credit would equal the cost of energy efficient products installed during
29 construction, with a maximum tax credit of \$1.80 per square foot of the building.
30 Additionally, a partial tax credit of \$0.60 per square foot would be provided for
31 building subsystems; and

- 32 (B) For single-family residential property, energy efficient homes that achieve 50
33 percent energy savings for heating and cooling over standards established by
34 subdivision (9)(B)(i)(VII) of Code Section 8-2-20. At least one-fifth of the energy
35 savings shall come from building envelope improvements. This provision also applies
36 to contractors of manufactured homes conforming to Federal Manufactured Home
37 Construction and Safety Standards.

(b)(1) A tax credit is allowed against the tax imposed under this article to a taxpayer for the construction, purchase, or lease of clean energy property that is placed into service in this state between July 1, 2008 and June 30, 2015.

(2) In no event shall the total amount of tax credits allowed by this subsection exceed \$25 million per year.

(3) The credit allowed by this subsection shall not exceed the following amounts:

(A) For all types of clean energy property, 35 percent of the cost of the clean energy property;

(B) For clean energy property placed in service for any purpose other than single-family residential:

(i) The sum of \$1 million per installation applies to clean energy property as described in subparagraphs (a)(3)(A), (a)(3)(C), and (a)(3)(D) of this Code section;

(ii) The sum of \$250,000.00 per installation applies to clean energy property related to solar energy equipment for domestic water heating as described in subparagraph (a)(3)(B) of this Code section; and

(iii) The sum of \$2 million per installation applies to clean energy property related to solar energy equipment for solar electric (photovoltaic), other solar thermal electric applications, and active space heating as described in subparagraph (a)(3)(B) of this Code section which is certified for performance by either the Solar Rating Certification Corporation, Florida Solar Energy Center, or by a comparable entity approved by the authority to have met the certification of Solar Rating Certification Corporation OG-100 or Florida Solar Energy Center-GO-80 for solar thermal collectors;

(C) For clean energy property placed in service for single-family residential purposes:

(i) The sum of \$2,500.00 per dwelling unit applies for clean energy property related to solar energy equipment for domestic water heating as described in subparagraph (a)(3)(B) of this Code section which is certified for performance by either the Solar Rating Certification Corporation, Florida Solar Energy Center, or by a comparable entity approved by the authority to have met the certification of Solar Rating Certification Corporation OG-100 or Florida Solar Energy Center-GO-80 for solar thermal collectors; or Solar Rating Certification Corporation certification OG-300 or Florida Solar Energy Center-GP-5-80 for solar thermal residential systems, or both;

(ii) The sum of \$10,500.00 per dwelling unit applies for clean energy property related to solar energy equipment for solar electric (photovoltaic), other solar thermal electric applications, and active space heating as described in subparagraph (a)(3)(B) of this Code section; and

(iii) The sum of \$10,500.00 per installation applies to clean energy property as described in subparagraphs (a)(3)(C) and (a)(3)(D) of this Code section;

(D) For energy efficient products as described in subparagraph (a)(3)(E) of this Code section placed in service for any purpose other than single family-residential:

(i) The sum of \$150.00 per clothes washer and room air conditioner, \$75.00 per clothes dryer, dishwasher, refrigerator, hot water heater, tankless hot water heaters, and a cap of \$150,000.00 per project for property applies as described in division (a)(3)(E)(i) of this Code section;

(ii) The sum of \$250,000.00 per project applies for property as described in division (a)(3)(E)(ii) of this Code section;

(iii) The sum of \$250,000.00 per project applies for property as described in division (a)(3)(E)(iii) of this Code section; and

(iv) The sum of \$20,000.00 per installation applies for property as described in division (a)(3)(E)(iv) of this Code section;

(E) For energy efficient products as described in subparagraph (a)(3)(E) of this Code section placed in service for single-family residential purposes:

(i) The sum of \$150.00 per clothes washer and room air conditioner and \$75.00 per clothes dryer, dishwasher, refrigerator, hot water heater, and tankless hot water heater applies as described in division (a)(3)(E)(i) of this Code section;

(ii) The sum of 25 percent of the cost of the clean energy property and a credit cap of \$2,500.00 per unit of clean energy property applies as described in division (a)(3)(E)(ii) of this Code section;

(iii) The sum of \$300.00 per unit of clean energy property applies as described in division (a)(3)(E)(iii) of this Code section; and

(iv) The sum of \$2,000.00 per installation for clean energy property applies as described in division (a)(3)(E)(iv) of this Code section; and

(F) For clean energy property as described in subparagraphs (a)(3)(F) and (a)(3)(G) of this Code section:

(i) The sum of \$250,000.00 per installation; and

(ii) The sum of \$2,000.00 per single-family residence applies as described in division (a)(3)(F)(ii) of this Code section.

(c) Where the amount of any credits allowed by this Code section exceeds the taxpayer's liability for such taxes in a taxable year, the excess may be taken as a credit against such taxpayer's quarterly or monthly payment under Code Section 48-7-103. Each employee whose employer receives credit against such taxpayer's quarterly or monthly payment under Code Section 48-7-103 shall receive credit against his or her income tax liability under Code Section 48-7-20 for the corresponding taxable year for the full amount which

1 would be credited against such liability prior to the application of the credit provided for
2 in this subsection. Credits against quarterly or monthly payments under Code Section
3 48-7-103 and credits against liability under Code Section 48-7-20 established by this
4 subsection shall not constitute income to the taxpayer.

5 (d) Any tax credits allowed by this Code section earned by a taxpayer and previously
6 claimed but not used by such taxpayer against its tax liability may be transferred or sold
7 in whole or in part by such taxpayer to another Georgia taxpayer, subject to the following
8 conditions:

9 (1) Such taxpayer may make only a single transfer or sale of tax credits earned in a
10 taxable year; however, the transfer or sale may involve one or more transferees;

11 (2) Such taxpayer shall submit to the authority and department a written notification of
12 any transfer or sale of tax credits within 30 days after the transfer or sale of such tax
13 credits. The notification shall include such taxpayer's tax credit balance prior to transfer,
14 the credit certificate number, the remaining balance after transfer, all tax identification
15 numbers for each transferee, the date of transfer, the amount transferred, and any other
16 information required by the authority or department;

17 (3) Failure to comply with this subsection shall result in the disallowance of the tax
18 credit until the taxpayer is in full compliance;

19 (4) The transfer or sale of this tax credit does not extend the time in which such tax credit
20 can be used. The carry-forward period for a tax credit that is transferred or sold shall
21 begin on the date on which the tax credit was originally earned;

22 (5) A transferee shall have only such rights to claim and use the tax credit that were
23 available to such taxpayer at the time of the transfer, except for the use of the credit in
24 subsection (c) of this Code section. To the extent that such taxpayer did not have rights
25 to claim or use the tax credit at the time of the transfer, the department shall either
26 disallow the tax credit claimed by the transferee or recapture the tax credit from the
27 transferee. The transferee's recourse is against such taxpayer; and

28 (6) The transferee must acquire the tax credits in this Code section for a minimum of 60
29 percent of the amount of the tax credits so transferred.

30 (e) The credit allowed by this Code section shall be subject to the following conditions and
31 limitations:

32 (1) A credit allowed by this Code section shall be taken for the taxable year in which the
33 clean energy property is installed and may be taken against income tax, or if the taxpayer
34 is an insurance company against gross premium tax;

35 (2) A taxpayer that claims a credit allowed under this subsection shall not be eligible to
36 claim any other credit under this subsection with respect to the same clean energy
37 property;

(3) A taxpayer may not take the credit allowed in this subsection for clean energy property the taxpayer leases from another unless the taxpayer obtains the lessor's written certification that the lessor will not claim a credit under this subsection with respect to the same clean energy property; and

(4) In no event shall the amount of the tax credits allowed by this Code section for a taxable year exceed the taxpayer's liability for such taxes. Any unused credit amount shall be allowed to be carried forward for five years from the close of the taxable year in which the installment of the clean energy property occurred. No such credit shall be allowed the taxpayer against prior years' tax liability.

(f) To claim a credit allowed by this Code section, the taxpayer shall provide any information required by the authority or department. Every taxpayer claiming a credit under this Code section shall maintain and make available for inspection by the authority or department any records that either entity considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for a credit and the amount of the credit rests upon the taxpayer, and no credit may be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

(g) The authority and department shall be authorized to adopt rules and regulations to provide for the administration of any tax credit provided by this Code section. Specifically, the authority and department shall create a mechanism to track and report the status and availability of credits for the public to review at a minimum on a quarterly basis.

(h) The authority and the department shall provide an annual report of:

- (1) The number of taxpayers that claimed the credits allowed in this Code section;
- (2) The cost of business property and clean energy property with respect to which credits were claimed;
- (3) The type of clean energy property installed and the location;
- (4) A determination of associated energy and economic benefits to the state; and
- (5) The total amount of credits allowed."

SECTION 2.

This Act shall become effective on July 1, 2008.

SECTION 3.

All laws and parts of laws in conflict with this Act are repealed.